

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 04-227
Competition in the Market for the)	
Delivery of Video Programming)	

Reply Comments of Telecommunications for the Deaf, Inc.

Telecommunications for the Deaf, Inc. ("TDI") submits the following Reply Comments in response to the Commission's *Notice of Inquiry* on competition in the market for delivery of video programming.¹ Specifically, TDI is responding to the questions posed in Paragraph Number 23 of the Notice.

TDI is a national advocacy organization that seeks to promote equal access issues in telecommunications and media for the 28 million Americans who are deaf, hard of hearing, late-deafened, or deaf-blind so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled.² On July 23, 2004, TDI, together with the National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network,

¹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket No. 04-227 (rel. June 17, 2004) ("Notice").

² TDI educates and encourages consumer involvement regarding legal rights to telecommunications accessibility; provides technical assistance and consultation to industry, associations, and individuals; encourages accessible applications of existing and emerging telecommunications and media technologies in all sectors of the community; advises on and promotes the uniformity of standards for telecommunications technologies; works in collaboration with other disability organizations, government, industry, and academia; develops and advocates national policies that support accessibility issues; and publishes *The GA-SK*, a quarterly news magazine, and the annual *Blue Book*, *TDI National Directory & Resource Guide for Equal Access in Telecommunications and Media for People Who Are Deaf, Late-Deafened, Hard-of-Hearing or Deaf-Blind*.

filed a Petition for Rulemaking with the Federal Communications Commission (“FCC”) requesting that FCC initiate a rulemaking to establish additional enforcement mechanisms to better implement the captioning rules, and to establish captioning quality standards to ensure high quality and reliable closed captioning. *Closed Captioning of Video Programming—Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, Petition for Rulemaking, PRM04MB (filed July 23, 2004) (“Petition for Rulemaking”). A copy of that Petition is attached. TDI requests that the FCC incorporate the information contained in the Petition for Rulemaking in this docket. For the convenience of the FCC, TDI is hereby indicating what sections of the Petition for Rulemaking are responsive to the Commission’s request in Paragraph 23 of the Notice.

We seek information on video programming providers’ and consumers’ experiences with closed captioning. Are providers complying with the existing rules?

Reference: See Petition for Rulemaking generally. See also Exhibits B1 through B9.

Are the complaint procedures sufficient?

Reference: See Petition for Rulemaking Section II and Exhibit A.

What is the experience with the accuracy of captioning?


Reference: See Petition for Rulemaking Sections III and IV.

In addition, we seek information on video programming providers’ and consumers’ experiences regarding the accessibility of emergency information through captioning or other visual means.

Reference: See Petition for Rulemaking generally. See also Exhibits B1 through B9.

In addition to the issues discussed in the Petition for Rulemaking, TDI strongly supports the conclusions of the National Association of the Deaf in its July 22, 2004 Comments filed in this docket. Specifically, TDI believes that the current procedures for applying for an exemption from captioning based on an undue burden are insufficient and should be revised.

Respectfully submitted,

A handwritten signature in black ink that reads "Brian McDermott". The signature is written in a cursive style and is positioned above a horizontal line.

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July 23, 2004

VIA COURIER

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

**Re: Petition for Rulemaking; In the Matter of Closed Captioning of Video
Programming—Implementation of Section 305 of the Telecommunications
Act of 1996: Video Programming Accessibility**

Dear Ms. Dortch:

Please find enclosed for filing the original and nine (9) copies of a Petition for Rulemaking, filed on behalf of Telecommunications for the Deaf, Inc., National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network, in the above-captioned matter. The Petition for Rulemaking seeks to establish additional enforcement mechanisms to better implement the captioning rules and to establish captioning quality standards to ensure high quality and reliable closed captioning.

Please date-stamp the enclosed extra copy of this filing. Should you have any questions please do not hesitate to contact the undersigned at (202) 295-8436.

Respectfully submitted,



Andrew D. Lipman
Paul O. Gagnier
Brian M. McDermott

Enclosures

Secretary
July 23, 2004
Page 2

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning of Video Programming)	RM - ____
)	
Implementation of Section 305 of the)	
Telecommunications Act of 1996)	
Video Programming Accessibility)	

PETITION FOR RULEMAKING

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Dated: July 23, 2004

SUMMARY

Petitioners Telecommunications for the Deaf, Inc., National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network request that the Federal Communications Commission (“Commission”) initiate a rulemaking to establish additional enforcement mechanisms to better implement the captioning rules, and to establish captioning quality standards to ensure high quality and reliable closed captioning.

Closed captioning is critical to deaf and hard of hearing individuals, both for personal safety and with respect to quality of life. Deaf and hard of hearing individuals who rely on closed captioning in order to have access to video programming continue to experience numerous problems with closed captioning. This has resulted in a lack of access to video programming that is contrary to the mandates of Section 713 of the Communications Act of 1934. The Commission’s adoption of the captioning rules was the first step towards increasing the availability of captioning. However, it has become clear that additional enforcement mechanisms are required in order to ensure full implementation of the rules and to increase accountability for noncompliance with the rules. In addition, measures are needed to ensure that the occurrence of technical problems is minimized and to ensure that technical problems that do occur are remedied efficiently and expeditiously. The Commission also must adopt quality of service standards in order to ensure that video programming is fully accessible to deaf and hard of hearing individuals.

Specifically, Petitioners request the following:

- The Commission should establish additional compliance and enforcement measures including the creation of an Commission-maintained database with updated contact information for video programming distributors and providers and the creation of a captioning complaint form.

- The Commission should establish compliance reporting requirements and should undertake compliance audits to ensure effective implementation of the captioning requirements and to improve accountability.
- The Commission should revise its complaint rules to require responses to consumer complaints regarding captioning quality issues (and other issues not directly tied to benchmark compliance) within 30 days.
- The Commission should establish fines/penalties for non-compliance with the captioning rules.
- The Commission should require continuous monitoring of captioning by the video programming distributor or provider to ensure that technical problems are remedied promptly and efficiently.
- The Commission should require video programming distributors to reformat edited or compressed captioning.
- The Commission should require that for a program to be considered “captioned” under the existing rules, it must meet minimum standards set by the Commission for completeness, accuracy, readability and synchronicity with the audio portion of the program.
- The Commission should adopt non-technical quality standards to ensure that video programming is “fully accessible” to deaf and hard of hearing individuals.

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**Before the
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Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning and Video Description of Video Programming)	RM - ____
)	
Closed Captioning Quality Standards)	

PETITION FOR RULEMAKING

Telecommunications for the Deaf, Inc. (“TDI”), by its undersigned counsel, National Association of the Deaf (“NAD”), Self Help for Hard of Hearing People, Inc. (“SHHH”), the Association for Late Deafened Adults (“ALDA”), and the Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”) (collectively “Petitioners”) petition the Federal Communications Commission (“Commission”), pursuant to 47 C.F.R. § 1.401, to initiate a rulemaking to establish additional enforcement mechanisms to better implement the captioning rules, and to establish captioning quality standards to ensure high quality and reliable closed captioning. The Commission should adopt minimum quality of service standards to ensure that deaf and hard of hearing individuals have full access to video programming, regardless of distribution technology, as required by Section 713 of the Communications Act of 1934 (“Section 713”).¹

This Petition will demonstrate that deaf and hard of hearing individuals who rely on closed captioning in order to access video programming continue to experience numerous problems with closed captioning. This has resulted in a lack of access to video programming that is

¹ 47 U.S.C. § 613(b). Section 713 of the Communications Act of 1934 (47 U.S.C. § 613(b)), which was added to the Communications Act by Section 305 of the Telecommunications Act of 1996, generally requires that video programming be closed captioned to ensure that it is accessible to deaf and hard of hearing individuals.

contrary to the mandates of Section 713. For example, deaf and hard of hearing individuals continue to encounter pervasive technical problems resulting in captioned programming appearing without captions, with garbled and otherwise illegible captions, and programming during which captioning simply disappears (for example, in some cases captions disappear one hour into a movie, a special report on a severe weather event is broadcast without captions by a local TV station, or captioning disappears ten minutes before the climax of a national broadcast program).

As Congress recognized when it adopted the closed captioning mandates set forth in Section 713, closed captioning is vital to deaf and hard of hearing individuals. The Conference Report accompanying the Act states that it is “the goal of the House to ensure that all Americans ultimately have access to video service and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace.”² Access to closed captioning is critical to deaf and hard of hearing individuals to assure personal and public safety as well as maintaining quality of life. In its comments on the Commission’s 1996 Notice of Inquiry³ regarding captioning accessibility, the Boston Chapter of Self Help for Hard of Hearing People poignantly described the critical nature of captioning for deaf and hard of hearing individuals:

Television is such a tremendous and wide-ranging force in American life today. Much of today’s information, from sports to local and national news and to emergency information, is transmitted verbally across television. Ten percent of Americans, the hearing impaired, are denied access to this force, if there is no captioning. Because they cannot hear or hear well enough, they are literally cut off from one of society’s main streams. . . . Communication via language differentiates human beings from all other living creatures. People are social beings and it is through speaking and hearing that one of

² Conf. Rep. No. 104-458, 104th Cong., 1d Sess. (1996) at 183-4.

³ See *Closed Captioning and Video Description of Video Programming*, Notice of Inquiry, MM Docket No. 95-176, FCC 95-484, 11 FCC Rcd 4912 (1996) (“NOI”).

their fundamental needs is fulfilled. Life without verbal communications is isolated, drab, and depressive. Advances in assistive technology for hearing impaired people can make the difference between living in isolation and continuing to be part of the world at large. Captioning is one of these technologies that enabled hearing impaired to lead informed, full and rewarding lives. Hearing loss is not simply an issue of aging. It affects children, young adults, and adults. Captioning is necessary for them to remain an active part of the larger community. Captioning provides them with informational and cultural quality.”⁴

The Commission’s adoption of the captioning rules required by Section 713(b) was the first step towards increasing the availability of captioning.⁵ However, based on experience with captioning over the course of the past five years since these rules went into effect, it is clear that additional enforcement mechanisms are required in order to ensure full implementation of the rules and to increase accountability for noncompliance with the rules. In addition, measures are needed (1) to ensure that the occurrence of technical problems is minimized and (2) to ensure that technical problems that do occur are remedied efficiently and expeditiously. The Commission also must adopt quality standards in order to ensure that video programming is fully accessible to deaf and hard of hearing individuals.

I. Introduction

A. Interest of Petitioners

1. Telecommunications for the Deaf, Inc.

TDI is a national advocacy organization that seeks to promote equal access issues in telecommunications and media for the 28 million Americans who are deaf, hard of hearing, late-

⁴ *Comments of Boston Chapter of Self Help for Hard of Hearing People*, filed January 25, 1996 in response to the Commission’s NOI (MM Docket 95-176).

⁵ Section 713(b) and (c) required the Commission to establish regulations and implementation schedules to ensure that video programming is fully accessible through closed captioning. 47 U.S.C. §§ 613(b) and (c).

deafened, or deaf-blind so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled.⁶

2. Deaf and Hard of Hearing Consumer Advocacy Network

DHHCAN, established in 1993, is a coalition of national organizations of, by, and for the deaf, hard of hearing, late-deafened, and deaf-blind that seeks to protect and expand the rights of individuals who are deaf, hard of hearing, late-deafened, and deaf-blind in education, employment, telecommunications, technology, health care, and community life. The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), Jewish Deaf Congress (JDC), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf Inc. (TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

⁶ TDI educates and encourages consumer involvement regarding legal rights to telecommunications accessibility; provides technical assistance and consultation to industry, associations, and individuals; encourages accessible applications of existing and emerging telecommunications and media technologies in all sectors of the community; advises on and promotes the uniformity of standards for telecommunications technologies; works in collaboration with other disability organizations, government, industry, and academia; develops and advocates national policies that support accessibility issues; and publishes *The GA-SK*, a quarterly news magazine, and the annual *Blue Book, TDI National Directory & Resource Guide for Equal Access in Telecommunications and Media for People Who Are Deaf, Late-Deafened, Hard-of-Hearing or Deaf-Blind*.

3. National Association of the Deaf

Established in 1880, the NAD is the nation's oldest and largest constituency organization safeguarding the accessibility and civil rights of twenty-eight million deaf, hard of hearing, late deafened, and deaf-blind Americans in a variety of areas, including education, employment, health care, and telecommunications. A private, non-profit organization, the NAD is a dynamic federation of state associations and organizational affiliates and direct members. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The NAD works closely with deafness related national organizations and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

4. Self Help for Hard of Hearing People, Inc.

SHHH is the nation's foremost consumer organization representing people with hearing loss. SHHH's national support network includes an office in the Washington D.C. area, 13 state organizations, and 250 local chapters. The SHHH mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. SHHH provides cutting edge information to consumers, professionals and family members through their website, hearingloss.org, their award-winning publication, Hearing Loss, and hearing accessible national and regional conventions. SHHH impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level.

5. Association for Late Deafened Adults

Formed in Chicago, Illinois in 1987, ALDA works collaboratively with other organizations around the world serving the needs of late-deafened people. ALDA promotes public and private programs designed to alleviate the problems of late-deafness and for

reintegrating late-deafened adults into all aspects of society. ALDA also provides educational information concerning issues affecting late-deafened adults, as well as advocacy on behalf of, and support for, late-deafened adults and their families and friends.

Petitioners represent most of the advocacy groups and organizations concerned with issues impacting deaf and hard of hearing Americans. Petitioners believe that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

B. Captioning Mandates Under Section 713 of the Communications Act and Current Captioning Rules

1. Background

Section 713 of the Communications Act of 1934, as amended, entitled “Video Programming Accessibility,” which was added to the Communications Act by Section 305 of the Telecommunications Act of 1996, generally requires that video programming be closed captioned to ensure that it is accessible to deaf and hard of hearing individuals. Section 713 also required the Commission to adopt and implement regulations to maximize closed captioning of video programming, regardless of the entity that provides the programming to consumers or the category of programming.

Specifically, Section 713(b) required the Commission to adopt rules establishing implementation schedules to ensure that: (1) video programming first published or exhibited after the effective date of the regulations (“new programming”) is “fully accessible” through the provision of closed captions, and (2) that video programming providers or owners maximize the

accessibility of video programming first published or exhibited prior to the effective date of such regulations (“pre-rule programming”) through the provision of closed captions.⁷

In a Report and Order released in August 1997, the Commission established closed captioning rules that included an eight-year transition schedule to phase in closed captioning for “new” non-exempt video programming (for programs first shown on or after January 1, 1998).⁸ Pursuant to the Commission’s subsequent *Order on Reconsideration*, as of January 1, 2006, 100% of video programming distributors’ new non-exempt programming must be closed captioned.⁹ The Commission established a ten-year transition period for pre-rule programming,¹⁰ requiring that at least 30% of a channel’s pre-rule programming be captioned beginning on January 1, 2003,¹¹ and 75% of all pre-rule programming delivered to consumers must be captioned beginning on January 1, 2008.¹²

The Commission also included a “no backsliding rule” requiring video programming providers to continue to provide closed captioning at a level substantially the same as the average level they provided during the first six months of 1997, even if that amount of closed captioning would exceed the benchmarks.¹³

⁷ 47 U.S.C. § 613(b).

⁸ *Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, MM Docket No. 95-176, FCC 97-279, Report and Order, 13 FCC Rcd 3272, 3301 (rel. Aug. 22, 1997) (“*Report and Order*”); 47 C.F.R. § 79.1(e).

⁹ *Closed Captioning and Video Description of Video Programming: Implementation of Section 305 of the Telecommunications Act of 1996*, 13 FCC Rcd 19973, FCC 98-236 (rel. Oct. 2, 1998) (“*Order on Reconsideration*”).

¹⁰ “Pre-rule programming” is programming published or exhibited prior to January 1, 1998.

¹¹ *Order on Reconsideration*, 13 FCC Rcd at 19988.

¹² *Id.* at 19984-19988.

¹³ *Id.* at 19983.

2. Current Complaint Procedures

With respect to enforcement, the Commission elected to establish a complaint procedure whereby complainants must file a written complaint with a video programming distributor in order to initiate a process to resolve captioning problems (on an *ad hoc* basis). Pursuant to the rules, video programming distributors are not required to respond to such complaints until 45 days after the end of the calendar quarter in which the complaint was received, or 45 days after the complaint was received, whichever is later. Complainants may not file captioning complaints with the Commission until 30 days after the time allotted for the video programming distributor to respond.¹⁴ The onus of initiating enforcement proceedings to ensure implementation of the rules and to resolve captioning problems under the current rules is placed upon consumers, and the time-frame for resolving disputes under the rule is unduly lengthy.

As a result, based on communications Petitioners continue to receive from deaf and hard of hearing individuals, consumers continue to be frustrated in their efforts to resolve captioning problems in an efficient and expeditious manner. It is also difficult for deaf and hard of hearing individuals to track down the necessary information to contact the appropriate contact person for the relevant video programming provider or distributor in an effort to resolve such problems.¹⁵ In the majority of cases, it is impossible for a television viewer of captions to independently determine the cause of the problem. To compound problems, video programming distributors

¹⁴ 47 C.F.R. § 79.1(g)(4).

¹⁵ See e.g., Exhibit B1, June 6, 2002 e-mail complaint of Gretchen Butkus of Melbourne, Florida to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning difficulty in reaching someone to address her captioning complaint; Exhibit B2, January 1, 2003 e-mail complaint of Joan Cassidy to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning difficulty in finding the proper person to contact for the lack of captioning on the Hallmark Channel.

and providers often point fingers at one another and send complainants on a fruitless paper chase without making much (or any) effort to assist in remedying the captioning problems.¹⁶

3. Benchmark Captioning Audit Reports

As discussed below,¹⁷ the current captioning rules also do not require video programming distributors or providers to file with the Commission benchmark compliance audit reports. The absence of reporting and record-keeping requirements make it impossible for deaf and hard of hearing individuals or the Commission to monitor compliance (and noncompliance) with the required quarterly benchmark levels for captioning. As a result, it appears that currently there is very little monitoring of (and accountability for) meeting the required benchmark levels of captioning. As discussed below,¹⁸ the complaint process under the current rules is not adequate to ensure that video programming distributors are complying with the benchmark captioning requirements.

4. Technical Quality Standards

As discussed in greater detail below,¹⁹ while the rules require video programming distributors to pass through captions of already captioned programs,²⁰ and require basic technical compatibility,²¹ the rules do not include an effective mechanism for ensuring that video programming distributors and providers continuously monitor captioning and engineering

¹⁶ See Exhibit B3, May 10, 2002 Complaint of Lisa Tempesta. (An inquiry as to why “Sex in the City” and “The Sopranos” was not captioned was responded to by HBO that the problem was with the cable provider. The cable provider responded that the problem was with HBO.)

¹⁷ See *infra* pp.12-16.

¹⁸ See *infra* part II.

¹⁹ See *infra* pp. 22-25.

²⁰ 47 C.F.R. § 79.1(c).

²¹ 47 C.F.R. § 15.119.

equipment in order to avoid the occurrence of technical captioning problems in the first instance.²² Technical problems continue to occur on a widespread basis, resulting in captioned programming being inaccessible to deaf and hard of hearing individuals (due to missing captions, garbled captions, and captions that disappear during portions of a program, for example).²³ Video programming distributors and providers apparently do not have sufficient incentive to diligently monitor captioning and their engineering equipment to prevent the occurrence of such technical problems.

The rules also do not require that edited or compressed captioned programming be reformatted in order to make the captions accessible to deaf and hard of hearing individuals (except where required in order for a distributor to meet its benchmark hours). As a result, deaf and hard of hearing individuals are foreclosed from access to programming that originally was captioned. Many programs are edited or compressed to fit within a specific time-frame, or edited in other manners which degrade the original captioning. As discussed below,²⁴ Petitioners submit that the Commission should revise its rules to require that edited or compressed programming be captioned in accordance with the mandates of Section 713.

²² The Commission has mandated that program distributors must take necessary steps to “monitor and maintain their equipment and signal transmissions” but has not enacted a system to ensure compliance with that mandate. *See* 13 FCC Rcd at 3369, ¶ 212.

²³ In the 2003 Report to the National Captioning Institute Foundation entitled “The State of Closed Captioning Services in the United States,” the Annenberg Public Policy Center of the University of Pennsylvania recommends ten areas in which captioning can be improved including “1. Address technical issues quickly, before video providers move to digital broadcasting and the 2006 mandate for 100 percent captioning is in place....6. Build quality control into the process of closed captioning.” *See Exhibit C*, “The State of Closed Captioning Services in the United States,” 2003 Report to the National Captioning Institute Foundation, at 45-46 (“2003 NCI Report”).

²⁴ *See infra* part III(C).

5. Non-Technical Quality Standards

The Commission's rules currently do not include non-technical quality of service standards. The Commission committed to continue to review non-technical quality issues and revisit the issue if necessary after a period of implementation of the original captioning rules. As discussed herein, the time has come for the Commission to address non-technical quality issues and adopt captioning quality standards in order to ensure that deaf and hard of hearing individuals have full access to video programming as required by Section 713.

More than five years have passed since the Commission's captioning rules became effective. Less than two years remain until 100% captioning of new non-exempt programming will be required. However, without effective enforcement procedures, enhanced standards to ensure technical quality, and the adoption of non-technical quality standards, fulfillment of the mandates of Section 713 will remain illusory.

Based on the experience of deaf and hard of hearing individuals as communicated to Petitioners over the course of the past five years since the captioning rules were established, and based on the personal experience of Petitioners' principals, Petitioners believe that the time has come for the Commission to address enforcement and captioning quality issues in order to ensure that deaf and hard of hearing individuals have full access to captioning of video programming. Each of these issues is discussed in turn in greater depth below. Petitioners respectfully request that the Commission expeditiously initiate a rulemaking proceeding to address these issues in order to ensure a smooth transition to 100% captioning for new non-exempt programming in 2006 and to 75% captioning for pre-rule programming in 2008.

II. The Commission Should Establish Additional Compliance and Enforcement Measures

Petitioners applaud the Commission's efforts to establish and implement the captioning rules to date. However, Petitioners submit that, in order to achieve the mandates of Section 713 of the Communications Act and better implement the requirements set forth in the Commission's captioning rules, additional enforcement and compliance measures must be adopted. Specifically, given that the Commission chose to place the responsibility for enforcement and compliance on captioning consumers through a complaint process, it is critical that the Commission establish the means to facilitate compliance monitoring and the reporting of complaints and to increase accountability for non-compliance.

A. The Commission Should Require Video Programming Distributors and Providers to Provide Contact Information, and Should Post Such Contact Information on the Commission's Website

1. Contact Information for Captioning Complaints

In the experience of Petitioners' constituents since the captioning rules went into effect, deaf and hard of hearing individuals have difficulty in getting responses from the video programming industry regarding captioning technical quality issues and compliance with the captioning benchmarks. Based on communications that Petitioners have received from their constituents, it appears that deaf and hard of hearing consumers generally have little confidence in the ability of the current captioning enforcement and compliance provisions to bring about the resolution of captioning problems in a timely and efficient manner.

As discussed in comments filed in the Commission's captioning proceedings, captioning consumers experienced the same types of difficulties in resolving captioning problems prior to

adoption of the captioning rules.²⁵ In Petitioners' experience, the captioning rules to date generally have not adequately addressed the problems that captioning consumers experience, due in part to a lack of responsiveness of video programming providers and distributors to remedy such problems in a timely and efficient manner.

In order to ensure the effective implementation of the captioning mandates, Petitioners propose that the Commission establish procedures to make reliable contact information readily available to captioning consumers.²⁶ Specifically, Petitioners propose that the Commission require each video programming provider and distributor to provide the Commission with (and to post on their websites) the complete contact information for the person responsible for addressing captioning complaints and resolving captioning problems, including the contact person's name, address, TTY/toll-free telephone number, facsimile number, and e-mail address. The Commission also should establish an ongoing requirement that video programming distributors and providers update the contact information within seven days of any changes.

The Commission should maintain video programming distributor and provider contact information (and updates thereto) on its website. The Commission also should include on its website the name, address, TTY/toll-free telephone number, facsimile number, and E-mail address

²⁵ See *Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, MM Docket No. 95-176, FCC 96-318, Report, 11 FCC Rcd 19,214 ¶¶ 89-93 (rel. Jul. 29, 1996) ("*FCC Report to Congress*").

²⁶ The Annenberg Public Policy Center of the University of Pennsylvania recommendation number six of ten is "Make it clear who audiences can contact and how. The Federal Communications Commission suggests that audiences with complaints first contact the network or cable company. Yet the industry interviews reveal that they receive very little feedback from audiences. Indeed, it was more often the captioning company, which sometimes provides a website or is a local entity, who gets the complaints. Offering the station's website, with a "link" for closed captioning, might begin a dialogue between audiences who use closed captioning and programmers that provide them." See Exhibit C, 2003 NCI Report, at 45.

for the Commission contact person responsible for addressing captioning complaints. In addition, the Commission should require video programming distributors that send bills to customers to include on consumer bills (or via bill inserts) specific contact information for submitting captioning complaints. Video programming distributors and providers such as TV stations that broadcast directly and do not bill the customer should be required to provide such information by way of periodic public service announcements (in addition to white pages and yellow pages telephone directory advertising listing the TV stations' address and TTY/telephone numbers, as well as on their websites).

It is important that the Commission establish contact information requirements as outlined above in order to provide consumers with a practical mechanism to file complaints with video programming distributors and providers regarding captioning problems. Due in large part to the absence of this type of easily accessible contact information, consumers to date have been hindered in their efforts to resolve captioning problems in an efficient and timely manner.²⁷ Moreover, consumers continue to be frustrated by non-responsive video programming distributors and providers who simply "pass the buck" and leave to the complainant the burden of tracking down the source of captioning problems.

One recent example of the frustration that the current system engenders occurred when WPXW PAX-66 in Fairfax Station, Virginia stopped transmitting captioning with its programs. *See Exhibit B4.* The customer in question initially called her cable provider and informed it that captioning was not appearing on the particular station. Instead of first checking the station's feed to

²⁷ The need for a single point of contact for complaints was a key issue identified by both consumers and captioning service providers at a recent Caption Quality Initiative Conference held on September 14, 2002 in Fairfax, Virginia. *See* Caption Quality Initiative Conference Report, September 14, 2002 available at: <http://tap.gallaudet.edu/CapQualReport.htm>

determine whether the problem was at the station level, the cable provider sent out a technician to ensure that the customer's connection was working.²⁸ After several more fruitless inquiries with the cable provider and hours of Internet research to determine whom to contact at the station, the customer managed to lodge a complaint with the appropriate person at PAX. Eleven days after the customer's initial complaint, the station finally determined that the problem was a "programming error in one of our satellite receivers not allowing it to pass the closed captioning."²⁹ Creating a better system for alerting the proper people of a captioning issue would benefit all parties by shortening the time-frames for resolution of similar problems.

Maintaining an efficient and updated system for consumers to contact providers will also serve to resolve problems without resulting to a formal complaint process. If a consumer has an effective way to alert a station that captioning is not being transmitted or is being transmitted improperly, the station will be in a better position to correct the situation in a timely manner. This will benefit both the consumer and the provider who will be in a better position to meet the captioning benchmarks. For example, if the provider is alerted at 8:00 p.m. that its captioning feature is not functioning, the provider may be able to resolve the issue prior to the 8:30 program. Therefore, only one half hour of programming would be lost as opposed to the possibility that an entire evening of programming would be lost due to a problem.

2. Captioning Complaint Form

In order to enhance the enforcement/complaint procedures set forth in the captioning rules

²⁸ In Petitioners' experience, customer service representatives of cable or satellite providers often attempt to blame the problem on the customer's failure to turn on the captioning feature on their television, even when the evidence precludes that from being the cause. Even after the customer explains that captioning is only missing on a particular channel and/or that other customers are having the exact same issues, service providers often insist that the problem is at the customer level.

and in turn, better ensure implementation of the captioning requirements, the Commission also should develop and make available on its website a standard captioning complaint form that may be used by consumers to file written complaints with the relevant video programming distributor/producer.³⁰ An example of such a form is attached hereto as Exhibit A. The form should be optional (*i.e.*, the complainant may prepare an E-mail or other communication in a different format providing the substance of the complaint) and should be made available on the Commission's website.

B. The Commission Should Establish Compliance Reporting Requirements and Should Undertake Compliance Audits to Ensure Effective Implementation of the Captioning Requirements and to Improve Accountability

1. Benchmark Reporting Requirements

The Commission previously elected not to establish specific record-keeping and public reporting requirements applicable to video programming distributors and providers.³¹ Petitioners submit that, based on experience with captioning over the course of the past five years since the captioning rules went into effect, the lack of such benchmark reporting requirements has seriously hampered the effectiveness of the captioning rules and the ability of captioning consumers, their advocates, and the Commission itself to monitor compliance with the captioning rules.

Except for a limited number of cases (initiated by consumer complaints) which have revealed deficiencies in levels of benchmark captioning by some video programming distributors, the Commission and captioning consumers have no means of determining whether video programming distributors have complied with the captioning benchmarks for each channel, for each

²⁹ See Exhibit B4, Response of David Linnemeyer, Chief Engineer of WPXW, to Diane Edge.

³⁰ The Commission has created consumer complaint forms in other contexts such as Form 475 (general telephone complaints) and Form 501 (Slamming complaints).

³¹ *Report and Order*, 13 FCC Rcd at 3383, ¶ 244.

calendar quarter, since the rules went into effect on January 1, 1998. Indeed, it is not clear the extent to which video programming distributors themselves are keeping track of their compliance (or non-compliance) with the benchmark requirements.

One example of a case in which the video programming provider itself apparently did not know whether it was in compliance with the captioning benchmarks came about as a result of a complaint filed by a captioning consumer.³² As a result of a complaint filed by Mr. Kelby Nathan Brick, it was revealed that Comcast Cablevision of Maryland, Inc. (“Comcast”) failed to comply with the Commission’s closed captioning requirements during the first and second quarters of the year 2000 on the Courtroom Television Network (“Court TV”) station. According to the Commission’s Order in that case, when Comcast contacted Court TV after receiving Mr. Brick’s complaint, Court TV represented in a letter to Comcast that it was in compliance with the benchmark hours because it provided three hours of captioned programming daily (at that time, six daily hours of captioning was required). Comcast stated that it relied on Court TV’s representation and relayed this information to Mr. Brick asserting that compliance with the benchmark requirements was being met on the Court TV channel distributed by Comcast. The Commission admonished Comcast, stating that, upon receiving information from Court TV indicating that only three hours of programming was captioned daily,

Comcast should have known that Court TV was not in compliance with the captioning rules. As a distributor of programming, Comcast is responsible for ensuring that the programming it distributes on its systems complies with the Commission’s captioning requirements. It failed to do so here.³³

³² See Kelby Nathan Brick v. Comcast Cablevision of Maryland and Courtroom Television Network, Request for Compliance with the Closed Captioning Requirements, *Memorandum Opinion and Order*, DA 02-45 (rel. Jan. 11, 2002) (“*Comcast Order*”).

³³ *Id.* at 4.

Comcast's failure to self-monitor compliance may be pervasive in the video programming industry, but without public benchmark reporting requirements, such problems are revealed and confirmed on an *ad hoc* basis, if and when a captioning consumer suspects a problem with compliance, and then only after a lengthy, onerous complaint process. During the protracted complaint process (first at the distributor level, then at the Commission level), which under the Commission's rules can take many months, consumers are without the required benchmark level of captioning for those stations.

Petitioners fear that the lack of a benchmark reporting requirement has created a situation where many providers are unaware that they are out of compliance with the benchmarks. As we approach the January 1, 2006 deadline for 100 percent captioning of new non-exempt programming, Petitioners believe that it is vital for providers to come into full compliance with the benchmarks. Even after the January 1, 2006 deadline, when all new non-exempt programming must be captioned, the creation of a benchmark reporting requirement would assist in the determination of whether providers are in compliance with the Commission's benchmarks for pre-rule non-exempt programming and for Spanish-language programming. Creating a system whereby video program providers must audit themselves and report on their compliance with the benchmarks is the most efficient and effective way to ensure that captioning is available at the levels mandated.

It is noteworthy that the Commission did not impose any penalties, sanctions, or other remedial measures as a result of the complaint against Comcast (in part because Court TV had on its own increased the number of captioned hours beyond the required benchmark amount).³⁴ As a result, the *Comcast Order* does not provide much incentive for other video programming providers

to self-audit their own compliance with the benchmarks. Affirmative reporting requirements are necessary to better ensure compliance and accountability and to assist captioning consumers and the Commission in monitoring compliance on an ongoing basis.

At this point in time, six years into the captioning phase-in period (and only two years away from the 100% captioning requirement for all new non-exempt programming), and in light of the general lack of information regarding benchmark compliance to date, it is of critical importance to the implementation and enforcement of the captioning rules that the Commission establish compliance reporting requirements. Specifically, the Commission should revise the captioning rules to require video programming distributors and providers to file with the Commission (and to make available on their websites) captioning compliance reports, on a quarterly basis, within 30 days following the end of the previous quarter, to be maintained and accessible on the Commission's website. This would allow captioning consumers to assist the Commission in efforts to ensure compliance with the captioning requirements.

In the absence of such reporting there is no mechanism by which captioning consumers may verify whether particular video programming distributors and providers are in compliance with the captioning requirements during the phase-in period (and after 2006 for pre-rule non-exempt programming and Spanish-language programming), except perhaps by filing a complaint and requesting that the video programming provider disclose such documentation. The burden should not be placed on consumers in this manner. Consumers should not be required to attempt to extract compliance information from video programming providers on a case-by-case basis. This type of piecemeal monitoring resulting from *ad hoc* customer complaints does not and cannot lead to

³⁴ The Commission determined that, “[a]s there has been a successful, albeit delayed, effort to comply with the captioning requirements, penalties, sanctions or other remedial measures are not

consistent effective enforcement and accountability throughout the video programming industry. Moreover, an audit reporting requirement will assist in ensuring a smooth transition toward 100 percent captioning of new non-exempt programming by January 1, 2006, and with 75 percent of pre-rule programming by January 1, 2008.

2. Benchmark Compliance Audits

In addition to establishing (going forward) compliance reporting requirements as discussed above, the Commission should (1) conduct compliance audits to determine the level of compliance (or non-compliance) by video programming distributors, (2) publish the results of such audits, and (3) take enforcement action where warranted by non-compliance. When the Commission elected not to adopt benchmark compliance reporting requirements, it stated that it would conduct compliance audits.³⁵ However, Petitioners are unaware of any Commission actions to conduct such audits. The lack of compliance audits and compliance reporting requirements seriously undermines enforcement of the captioning rules and the effectiveness of the captioning rules.

Petitioners submit that the adoption of compliance reporting requirements as outlined above, in addition to Commission auditing to determine non-compliance with the benchmark requirements, will help ensure a smooth transition toward 100 percent captioning of new non-exempt video programming by 2006 as well as the benchmark for pre-rule programming. By auditing current and past compliance now, the Commission may discover benchmark noncompliance, and will be in a better position to require distributors to remedy failures to meet the benchmark going forward (in addition to requiring increased captioning hours and imposing other penalties as warranted). In so doing, the Commission will assist the video programming

warranted at this time.” *Id.* at 5.

³⁵ *Order on Reconsideration*, 13 FCC Rcd at 20030, ¶ 126.

industry to come into compliance as required in the timetable, rather than waiting until 2006 for the industry to discover problems and then claim that they do not have enough time and/or resources to come into compliance with 100% captioning by 2006.

C. The Commission Should Revise its Complaint Rules to Require Responses to Consumer Complaints Regarding Captioning Quality Issues (and Other Issues Not Directly Tied to Benchmark Compliance) Within 30 Days

Under the current rules, video programming distributors are not required to respond to a complaint about captioning problems (including technical captioning problems) until 45 days after the end of the prior calendar quarter or 45 days after receipt of the written complaint, whichever comes later. Accordingly, if a consumer encounters technical problems with missing captions on January 1st and immediately files a written complaint with the relevant video programming distributor, the video programming distributor is not required to respond until May 15th. Four months could pass before the video programming provider is legally required to respond, and in the interim, the consumer would continue to suffer from the lack of access to the relevant video programming.

The problem is compounded when these consumer are paying the high costs of cable, satellite, or other distribution services, but are not receiving captioned programming, so that in effect they have no access to the services for which they are paying premium prices. Unfortunately, based on correspondence that Petitioners have received from consumers regarding these issues, this happens far too often. In many parts of the country, consumers do not have any alternative choices of cable, satellite or other distributor but instead have only one option (and cannot receive broadcast programming without such a service). Particularly in the absence of alternative sources for receiving video programming (and even where such competition exists), the distributors in many cases apparently do not feel any market pressures to quickly remedy such problems.

In light of the problems that captioning consumers continue to experience with respect to non-responsiveness to captioning complaints and the difficulty in resolving captioning complaints expeditiously and efficiently, the Commission should revise the complaint procedures set forth in Rule 79.1(g) to establish two categories of complaints: (1) complaints regarding the number of hours captioned in a quarter (to which the video programming distributor may wait to respond until 30 days after the end of the relevant calendar quarter or 30 days after the complaint is filed, whichever is later) and (2) complaints regarding other captioning issues not related to the number of benchmark hours (including, but not limited to technical problems resulting in missing captions or garbled captions, for example) to which the video programming distributor must respond within 30 days after the complaint is filed. Particularly given that the types of technical problems have not changed or improved since the Commission's *1996 Report to Congress*, the rules must be revised to strengthen enforcement and compliance, including the creation of a shortened complaint response time-frame, at a minimum with respect to technical quality issues.³⁶

D. The Commission Should Establish Fines/Penalties for Non-Compliance with the Captioning Rules

In order to ensure full access to video programming as required by Section 713 of the

³⁶ In the *Order on Reconsideration*, the Commission recognized that its decision to allow video programming distributors to respond to a complaint within 45 days of the end of the quarter or after the complaint is filed "is premised on the complaint being related to the compliance with the quarterly benchmarks. In order to avoid confusion for both video programming providers [sic] and consumers, however, we will apply the same time table even to those alleged violations that are not tied to quarterly compliance benchmarks." *Order on Reconsideration* at 20025, ¶ 116. Petitioners submit that this system has not worked effectively and that the Commission should create a shorter response time for complaints that are not related to quarterly compliance benchmarks. Shortening the time frame by which distributors must respond to complaints not related to the number of captioned hours (such as technical problems) will better ensure enforcement of the rules and the timely and efficient resolution of captioning problems. Petitioners believe that the industry and consumers have become familiar with the concept of quarterly benchmarks and there is little chance that differentiating between benchmark related complaints and non-benchmark related complaints will create any confusion.

Communications Act, the Commission should establish additional enforcement measures, including punitive measures such as specific fines, for noncompliance with the Commission's captioning rules.³⁷ Specifically, Petitioners propose that the Commission establish a base forfeiture amount for violations of the captioning benchmark requirements. Such a forfeiture would create a financial incentive for video programming distributors or providers to comply with the Commission's benchmarks. Petitioners suggest that the base forfeiture amount for violation of the benchmark captioning requirements be set at \$8,000 per violation, with each hour of programming below the applicable benchmark being counted as a separate violation.³⁸ (In January 2006 when 100 percent captioning is required for new non-exempt video programming, the \$8,000 fine should apply for every hour of new programming that is not captioned.) The establishment of a system of punitive penalties is necessary to ensure compliance as the benchmark levels increase.

Experience has shown that the marketplace will not ensure compliance with the captioning benchmarks. Even as new more technically-advanced methods of transmitting programming, such as digital television, become more prevalent, evidence indicates that the marketplace has failed to ensure compliance with captioning requirements. A recent nationwide sampling of locally broadcast digital television programming conducted by the WGBH National Center for Accessible Media ("NCAM"), showed that 35% of local digital television stations failed to provide any closed captioning and only 20% provided captions in compliance with the Commission caption decoder rules (47 CFR Section 15.122), even though Commission rules now apply equally to digital

³⁷ Currently, the Commission generally wields the threat of potential increased captioning requirements beyond the benchmarks for noncompliance. *See, e.g., Comcast Order* at 5, n.32; 47 C.F.R. § 79.1(b)(8).

³⁸ The suggested base forfeiture amount of \$8,000 is akin to the Commission's current forfeiture amount for violation of the Commission's children's television programming requirements.

broadcasts and require that at least 75% of new non-exempt programming be captioned as of January 1, 2004.³⁹

In light of the apparent failure of some programming distributors or providers to affirmatively audit their programming to determine compliance with the Commission's benchmarks, Petitioners fear that the frequency of non-compliance will increase as the Commission's benchmarks increase. Accordingly, increased enforcement measures are required to provide incentives for the regulated industry to comply with the rules and to ensure captioning quality, reliability, and availability.

III. The Commission Should Revise its Captioning Rules to Specify Procedures and Mechanisms for Ensuring Technical Quality

A. The Current Rules Do Not Ensure Technical Quality for Closed Captioning

In the 1997 *Report and Order*, the Commission noted that technical captioning quality is addressed by Rule Sections 15.119 (technical requirements for transmission and display of closed captioning to assure basic technical compatibility among captioning services) and 76.606 (which requires cable companies to pass through captioning intact).⁴⁰ However, in light of reported problems with captioning not being transmitted properly, the Commission stated that it would "adopt and enforce a rule to ensure that captioned programming is always delivered to viewers complete and intact. This rule, Section 79.1(c) is an extension of the existing provision of the cable rules that requires cable operators to deliver existing captions intact."⁴¹ Petitioners applaud the

³⁹ NCAM also notes that although some High Definition versions of pay cable and satellite services offer regular closed captioning, many of the new cable and satellite High Definition channels (such as INHD, HDNet, Discovery HD and national/regional sports networks) offer no captioning, even when their program content has been captioned for other, analog, distribution channels.

⁴⁰ 47 C.F.R. § 15.119 and 47 C.F.R. § 76.606.

⁴¹ *Report and Order*, 13 FCC Rcd at 3368, ¶ 211.

Commission's decision to extend the requirements of 76.606 to apply to all video programming providers, regardless of distribution technology.⁴² However, based on six years' experience since the captioning rules became effective, the pass-through requirement has not been sufficient to ensure that video programming distributors and providers take the steps necessary to prevent (and expeditiously remedy) technical problems that result in captions being removed from programming or otherwise becoming garbled and inaccessible to deaf and hard of hearing viewers.

In the 1997 *Report and Order*, the Commission reiterated that it is

unacceptable that existing captions might fail to be transmitted in a complete and intact manner to consumers. The reported problems – such as captions not being delivered intact, captions not synchronized with the video portion of the program, captions ending before the end of the programming, programming without captions even though the program indicates captioning or captions transmitted during one offering of the program but not another – deny accessibility to persons with hearing disabilities even when captioning seems to be available. . . . We believe that our enforcement of this new rule [Section 79.1(c) pass through requirement] and the enforcement of the requirements of Sections 15.119 and 73.682 in conjunction with the mandatory captioning requirements will ensure the technical quality for the closed captioning that is delivered to viewers' television receivers.⁴³

Unfortunately, based on the communications Petitioners continue to receive from deaf and hard of hearing individuals, such technical problems (including, but not limited to the same problems highlighted in the 1997 *Report and Order*) continue to occur, and technical quality has not been ensured or noticeably improved by virtue of the pass-through requirement in Section 79.1(c).⁴⁴

⁴² 47 C.F.R. § 79.1(c) (obligation to pass through captions of already captioned programs).

⁴³ *Report and Order*, 13 FCC Rcd at 3368-69, ¶ 211 (emphasis added).

⁴⁴ See Exhibit B5, July 20, 2000 e-mail complaint of Jan Boldt of Falls Church to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning several problems with captioning that still commonly occur such as captioning cutting off prior to the end of programming and failure to synchronize captioning with what is shown visually.

Accordingly, the Commission must adopt additional mechanisms and procedures in order to prevent the occurrence of technical problems in the first instance, and to expeditiously remedy technical problems that may occur, in order to ensure that deaf and hard of hearing individuals are afforded “full accessibility” to video programming as required by Section 713 of the Communications Act.

Some of the types of technical problems that continue to occur with frequency, based on communications Petitioners continue to receive from deaf and hard of hearing individuals (and the personal experience of Petitioners’ principals), include the following:

1. Captions are turned off ten minutes before the end of national network programming.⁴⁵ (For example, captions disappear from national network programs that lead into local news broadcasts. For hearing persons, imagine watching a cliff-hanger and losing the audio ten minutes before the end of the show, every time. This is what happens to deaf and hard of hearing individuals when the captioning disappears.)
2. Captions disappear one hour into a two-hour movie.
3. Captions are absent although listed on TV programming schedules as having closed captions.⁴⁶ (On a related topic, in the case of pay-per-view channels, deaf and hard of hearing individuals have gone through the effort of selecting a pay-per-view program listed as having closed captions, and pay for the programming, only to discover that the program does not have captions.)
4. Captions are illegible, include white boxes, and overtypes.
5. Captions appear on a national program in one locality, but not another.⁴⁷

⁴⁵ See *FCC Report to Congress* at ¶ 89; n. 211 (“It is also reported that the closed captions are sometimes turned off five to eight minutes before the end of national network programming.”) Based on information provided by TDI’s constituents, this problem has not been satisfactorily resolved.

⁴⁶ See e.g., Exhibit B6, E-mail complaint of Gretchen Butkus to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning programs listed in Florida Today newspaper as being captioned that are not captioned.

⁴⁷ In the 1997 Report and Order, the Commission used the example of Jeopardy! being captioned in Washington, D.C. and Nashville, Tennessee, but not in Atlanta, Georgia. See *FCC Report to Congress*, 11 FCC Rcd 19,214 at ¶ 90. More recently the season finale of Survivor:

6. Captions are missing from repeats of previously aired captioned programming or have scrambled and unreadable captions.⁴⁸

Even more disturbing is a recent trend among providers to include a disclaimer in its broadcast stating that the provider is not responsible for the correctness of captions.⁴⁹ While the Petitioners understand that some small errors will occur, particularly during live events, the programming provider should be held ultimately responsible for monitoring captioning and to take action if the captioning quality is substandard. Otherwise it will be easy for providers to sidestep captioning requirements by contracting with substandard captioning providers and disavowing the end product by saying that the quality of captioning is not in their control. If the text is full of errors it is not a caption, and should not be counted as such for purposes of meeting the law.

Given that captioning problems continue to occur and in some cases captioning quality has deteriorated since the adoption of the 1997 rules, it is clear that additional mechanisms or procedures are required to prevent the occurrence of such problems, in addition to the need for additional enforcement mechanisms (as outlined above) to remedy any technical problems that occur.

B. The Commission Should Require Continuous Monitoring of Captioning to Ensure that Technical Problems are Remedied Promptly and Efficiently

As discussed above, deaf and hard of hearing individuals continue to encounter numerous technical problems with captioning. While consumers may file complaints under the current rules,

Marquesas on May 17, 2002 was captioned in Baltimore but not in Vienna, Virginia. See Exhibit B7, Complaint of Lisa Tempesta to Cox Northern Virginia and related responses.

⁴⁸ See *FCC Report to Congress* at ¶ 90, n. 214. See also, Exhibit B8, E-mail complaint of Richard Johnson to the Northern Virginia Resource Center for Deaf and Hard of Hearing concerning the fact that captioning on Fox 5-Washington's 10 o'clock news captioning was garbled and/or incomprehensible on April 29-30, 2003 and May 5-8, 2003.

⁴⁹ For example, CBS Sports routinely broadcasts a disclaimer that it is not responsible for the accuracy of its captions during live sporting events.

as discussed above,⁵⁰ the process is onerous, lengthy, and rarely (if ever) results in the prompt and efficient resolution of a captioning technical problem. It is telling that the same types of technical problems continue to occur as those which occurred at the time the Commission submitted its Report to Congress on Video Programming Accessibility in 1996 (more than seven years ago),⁵¹ and when the Commission adopted the captioning rules in 1997.⁵²

Petitioners believe that many of these technical problems could be prevented in the first instance if the video programming distributor and providers had mechanisms in place to monitor captioning and routinely check their engineering equipment and procedures.⁵³ However, based on the communications that Petitioners have received from captioning consumers, many video programming providers and distributors apparently do not know about such problems until and unless a consumer actively complains about the problem. Presumably, such video programming providers and distributors are not monitoring the captioning equipment on a continuous basis to ensure technical quality, and to ensure compliance with the pass through requirement set forth in Section 79.1(c).⁵⁴

In the 1997 *Report and Order*, the Commission stated that it would

require video programming distributors to be responsible for any steps needed to monitor and maintain their equipment and signal transmissions to ensure that the captioning included with the video

⁵⁰ See *supra* part I(B)(2).

⁵¹ See *FCC Report to Congress*, 11 FCC Rcd 19214.

⁵² See *Report and Order*, 13 FCC Rcd 3272.

⁵³ During the Caption Quality Initiative Conference held in September 2002 in Fairfax, Virginia, consumers attending the conference identified the need for ongoing monitoring to ensure problem-free delivery as the most important issue relating to prerecorded captioning material that needs to be resolved. See Caption Quality Initiative Conference Report, September 14, 2002 available at: <http://tap.gallaudet.edu/CapQualReport.htm>.

⁵⁴ 47 C.F.R. § 79.1(c).

programming reaches consumers. Programming distributors will be responsible for any corrective measures necessary to ensure that the captioning is consistently included with the video programming delivered to viewers.⁵⁵

However, the Commission did not establish specific rules to operationalize these monitoring requirements. Petitioners respectfully submit that monitoring by both distributors and providers is of critical importance to minimize (and ultimately eliminate) the types of technical problems that continue to occur which prevent deaf and hard of hearing individuals from having access to captioned programs.⁵⁶ While the increased enforcement measures outlined above⁵⁷ are critical to implementation of the captioning rules, the need for filing complaints would be greatly minimized if video programming distributors and providers actively monitored and maintained their equipment in order to eliminate the occurrence of technical problems in the first instance, and to quickly and efficiently repair such problems that do occur (rather than waiting to receive a complaint to discover that such a problem is occurring).

In addition, without such continuous monitoring and equipment maintenance, many video programming distributors might be counting programming as captioned when in fact the programming was not captioned. In some cases, the distributor may not even know that it is violating the Section 79.1(c) pass-through requirements until and unless a captioning consumer complains. Rather than placing the burden on deaf and hard of hearing individuals to discover these

⁵⁵ 13 FCC Rcd at 3369, ¶ 212.

⁵⁶ As the Commission stated in its *Report to Congress*, “[t]he critical technical steps of a quality captioning service are accurate encoding, transmission reception and decoding of the signal. To avoid such errors, it is important that the captioned signal be monitored as it is fed, monitored during the duplication process and checked to ensure that the equipment used is not inadvertently stripping the captions, moving them onto the wrong line or placing them in the wrong field.” *FCC Report to Congress*, 11 FCC Rcd at ¶ 93.

⁵⁷ See *supra* part II.

types of problems, the distributor and providers should meet their obligations to monitor and maintain their equipment to minimize the occurrence of such technical problems that result in previously captioned programming being inaccessible to deaf and hard of hearing individuals.

The Commission should clarify and confirm that its captioning rules require video programming providers to have in place procedures to continuously monitor captioning equipment and processes to *avoid* technical problems in the first instance, and to quickly remedy any technical problems that may arise. In addition, as discussed below, the Commission also should clarify by rule that, to the extent such technical problems arise and cause any portion of the captioning to be garbled or missing, the program may not be counted toward meeting the applicable benchmark of required captioning hours. The Commission also should require that programs for which captioning was garbled or missing (during the entire program or any part thereof) be recorded/logged and included in a separate section of the video programming provider's captioning audit reports so that the Commission and captioning consumers may ensure that such programming is not included in the video programming provider's captioned hours.⁵⁸

C. The Commission Should Require Video Programming Distributors to Reformat Edited or Compressed Captioning

The Commission previously elected not to require video programming distributors to

⁵⁸ If there are problems with the audio portion of a program, the video programming provider apparently has far more incentive to ensure a rapid response to remedy the problem than in the context of captioning. (It is difficult to imagine a video programming provider allowing the audio portion of a program to simply be removed from the program, as occurs with captioning far too often, and in some cases for the same shows, week after week.) Again, it appears that market forces do not adequately address the need to ensure the consistent, reliable technical quality of captioning. Captioning consumers often feel isolated and extremely frustrated in their numerous and repeated attempts to have such captioning technical quality problems remedied.

reformat captioned programming that has been edited or compressed.⁵⁹ However, the Commission did not exempt edited programming; instead, under the current rules video programming distributors are only required to reformat the captions of a specific program if such captioning is necessary to reach the applicable benchmark.⁶⁰ In the *Order on Reconsideration*, the Commission reaffirmed its previous decision that a program received with captions that is edited is not required to have reformatted captions under § 79.1(c) (the “pass-through” rule).⁶¹ However, the Commission clarified that as the benchmarks increase, distributors will have to reformat the captions to comply with the rules. As the Commission noted, “We expect that new technologies will be developed to standardize reformatting procedures among captioning agencies making the process easier and less expensive. . . . We expect formatting to become standardized among captioning agencies which will in turn allow for easier, less expensive reformatting of edited programming.”⁶²

The Commission reasoned that by giving distributors until 2006 to gradually begin to reformat edited/compressed programming as required in order to meet the benchmark levels,

⁵⁹ *FCC Report and Order*, 13 FCC Rcd at 1312-1313, ¶ 86. *Order on Reconsideration* at 20009, ¶ 83. In its Report to Congress in 1996, the Commission explained the problems that result when previously captioned programming is edited or compressed but for which the captioning is not reformatted accordingly: “Closed captions may not remain with a program throughout the distribution chain, as would be expected. It is reported that, sometimes, a prime time program broadcast on network television may not have the captions when it is rerun in syndication or redistributed by a cable network. When a prime time program goes into syndication it may be edited to fit a shorter time frame. While the video and audio portions remain intact, the captioning may be removed. For example, some PBS programming originally broadcast with closed captions has been redistributed on cable by A&E without the captions included.” *Report to Congress*, 11 FCC Rcd at ¶ 90 (footnote references omitted). The lack of captioning for previously captioned programming due to editing/compressing remains a pervasive problem and results in consumer confusion, frustration, and disappointment when shows they know have been captioned no longer are.

⁶⁰ *Order on Reconsideration* at 20008, ¶ 80.

⁶¹ *Id.* at ¶ 82.

⁶² *Id.*

distributors would then have the procedures in place to undertake reformatting in all cases as of January 1, 2006.⁶³ Petitioners respectfully submit that, to the contrary, if distributors are not required to reformat edited or compressed programming until 100% captioning is required in 2006, they may be more likely to claim that they are not able to comply with the 100% captioning requirement on January 1, 2006.

Based on the numerous consumer complaints received by the Petitioners, it is not uncommon for rebroadcast or time compressed material to be labeled as captioned in programming guides even though no captions appear. It seems likely that providers may improperly count mislabeled reformatted programming towards making the benchmark numbers. Without a requirement that the providers track and report on their compliance with benchmarks, some providers may even be unaware that they are not in compliance.

In addition, since the *Order on Reconsideration* was issued, technology has progressed to the point that it is not problematic or cumbersome for providers to be required to caption edited or compressed programming. For example, software is available that extracts captioning data prior to video compression and then reinserts it after the video is decompressed.⁶⁴ Requiring reformatting of edited or compressed programming now will allow for a smoother transition to 100% captioning in 2006.

Moreover, Petitioners submit that the Commission should require distributors to reformat previously captioned programming that has been edited or compressed now (rather than waiting until 2006), in order to ensure that deaf and hard of hearing individuals have full access to video

⁶³ *Id.*

⁶⁴ For example, Computer Prompting and Captioning Co. (www.cpcweb.com) offers software programs that allow for the reformatting or time compressing of video material without losing captioning.

programming as required by Section 713 of the Communications Act. In the absence of such reformatting, the programming is not accessible to deaf and hard of hearing individuals.⁶⁵

D. The Commission Should Clarify that Incomplete Captioning Does Not Qualify as Captioned Hours

Under the Commission's current rules, to the extent technical problems occur which result in programs that were already captioned not being passed through with the original closed captioning intact, such failures to pass through already captioned programs constitutes a violation of Section 79.1(c) of the rules. The Commission should revise its captioning rules to clarify that if a video programming distributor fails to pass through original closed captioning intact as required by Section 79.1(c), whether in whole or in part, then the programming does not qualify as captioned for purposes of meeting the captioning benchmarks.

For example, if the captioning suddenly cuts off five or ten minutes before the end of the program, or an hour before the end of the program, or for any period of time during the programming, or if the captioning is garbled and otherwise illegible and/or incomplete, then the

⁶⁵ In addition, as a result of previously captioned programming being edited and/or compressed in cases where a distributor then removes the captioning rather than reformatting the captioning, programming and TV/cable listings may incorrectly list the programming as closed captioned ("cc") even though it no longer is. The Commission noted that

persons with hearing disabilities are concerned that programming often includes the "cc" closed captioning logo even when the version of the program being shown is not captioned. We expect video programming providers to take any steps necessary to ensure that the captioning logo is used only when the version of the programming being shown is captioned. We also expect that video programming providers in conjunction with those publicizing programming and publishing programming schedules will make every effort to correctly label programming as to whether it is captioned. *Order on Reconsideration* at ¶ 83.

There may be other reasons for programming incorrectly being listed as "cc" even when the programming is not closed captioned, but many instances of this problem likely could be avoided, and deaf and hard of hearing individuals would actually have access to the programming, if the Commission required distributors to reformat edited or compressed programming.

video program should not qualify as a captioned program. The Commission should establish procedures as part of the reporting requirements Petitioners propose herein by which video programming distributors must keep track of such occurrences of technical problems that result in already captioned programming not being passed through, whether in whole or in part.

A rule clarifying that garbled, incomplete and/or missing captions during the whole or any portion of a program will disqualify the entire program from counting towards the captioned benchmarks will give providers and distributors greater incentive to ensure that captioning is not interrupted in the first instance. The adoption of the 1997 captioning rules caused a proliferation of technically substandard captioning methods and agencies that provide captioning services at low costs but whose captioning product is garbled, incomplete and often times entirely unreadable. Creating a rule that clarifies that substandard captioning will not count towards compliance benchmarks will put video programming providers and distributors on notice that they are ultimately responsible for their captioning quality.

E. Live Programming that Uses the “Electronic Newsroom Technique” Should Not Count as Captioned Programming in Terms of Measuring Compliance with the Commission’s Rules

The Commission already forbids major national broadcast television network affiliates in the top 25 television markets as designated by Nielsen’s Designated Market Areas (“DMAs”) from counting live programming that is transmitted using the “electronic newsroom technique” as captioned programming in terms of measuring compliance with the Commission’s rules.⁶⁶ Petitioners believe that technology has developed to a degree that the use of the “electronic

⁶⁶ See 47 C.F.R. § 79.1(e)(3). National nonbroadcast networks that serve at least 50% of all homes subscribing to multichannel video programming services are also not permitted to count live programming transmitted with the “electronic newsroom technique” as captioned programming in relation to measuring compliance with the Commission’s rules.

newsroom technique” should be disfavored as it does not provide a quality captioned end product to consumers. Therefore, Petitioners ask that the Commission extend the prohibition of counting “electronic newsroom technique” programming towards meeting compliance standards to markets beyond the top 25 DMAs.

IV. The Commission Should Adopt Non-Technical Quality Standards to Ensure that Video Programming is “Fully Accessible” to Deaf and Hard of Hearing Individuals as Mandated by Section 713 of the Communications Act

Although five years have passed since the captioning rules became effective, the quality of captioning generally has not improved. The same types of captioning quality problems (both technical and non-technical) that occurred in 1995 when the Commission opened its NOI proceeding continue to occur.⁶⁷ When the Commission released its *Report and Order* and its *Order on Reconsideration*, the Commission declined to establish non-technical quality standards for captioning, but stated that it would continue to monitor quality issues and would consider establishing such standards if market incentives did not improve captioning quality.⁶⁸ However, the Commission recognized that “[i]nherent in a captioning obligation is the possibility of some

⁶⁷ See, e.g., FCC *Report to Congress* at ¶ 89-92 (describing numerous problems reported by captioning viewers regarding closed captioning quality.)

⁶⁸ In its *Notice of Proposed Rulemaking* (MM Docket 95-176, FCC 97-4, 12 FCC Rcd 1044 (1997)) the Commission tentatively concluded that it should not adopt standards for “non-technical” aspects of closed captioning, including accuracy of transcription, spelling, and placement and style at the beginning of the “phase in period” for closed captioning. Instead, the Commission proposed to “monitor the closed captioning that results from our requirements and, if necessary, revisit this issue at a later date.” In the *Report and Order*, the Commission concluded that “it would be best not to adopt standards relating to the non-technical quality of captioning and to allow market forces establish industry standards. As indicated above, **we intend to monitor the quality of the captions that are provided during the transition period.** Based on information we gather or receive from the public, we may revisit the need for standards for non-technical quality during the transition period. The review during the transition period will allow us to consider whether we have taken the appropriate actions necessary to further the important goal of accessibility of video programming as directed by Congress.” *Report and Order*, 13 FCC Rcd at 3387, ¶ 257 (emphasis added).

definition of a minimal level of quality necessary to demonstrate compliance with the requirement. Thus, we believe that it is well within the Commission's discretion to now adopt rules, standards, or guidelines that address these matters."⁶⁹

In deferring adoption of non-technical captioning quality standards, the Commission reasoned that video programming providers would establish quality standards and quality controls for the non-technical aspects of captioning through their arrangements with captioning suppliers or as part of the requirements of their programming contracts and licensing arrangements:

We expect that this approach will result in high quality captions comparable to the level of quality of other aspects of programming such as the audio and video. We will, however, consider revisiting this issue if, after some period of implementation of our transition rules, it becomes apparent that our assumptions regarding the marketplace incentives for quality captioning are incorrect.⁷⁰

While the Commission reasoned that market incentives could address non-technical quality without the need for quality standards, the Commission also emphasized that it would revisit the need for adopting non-technical quality standards during the phase-in period if warranted.⁷¹ The Commission also recognized that:

captions must provide information substantially equivalent to that of the audio portion of a video program in order to be useful and ensure accessibility to individuals with hearing disabilities. Captions also should not interfere with the viewability of the video portion of the program. However, we believe that there are good reasons to defer action on this issue in order to provide time for the captioning community to adjust and adapt to the new environment created by

⁶⁹ *Notice of Proposed Rulemaking*, 12 FCC Rcd at 1087, ¶ 104.

⁷⁰ *Report and Order* at 3374, ¶ 222.

⁷¹ *Id.* at 3374, ¶ 225 ("Our transition schedule is intended to allow us the flexibility to revisit issues, such as the quality of captioning, as it is implemented, if necessary.")

our rules. If, after a period of experience, it becomes apparent that quality levels are unsatisfactory, we can revisit this issue.⁷²

Now is the time for the Commission to establish quality standards in order to ensure that deaf and hard of hearing individuals have access to video programming in accordance with the mandates of Section 713. By establishing a rulemaking proceeding as requested by this Petition, the Commission will be able to gather information from interested consumers, captioning providers, and the affected video programming industry regarding how best to craft such standards.

Based upon complaints received by the Petitioners, there are widespread problems with non-technical captioning quality. While small and occasional captioning inaccuracies can be tolerated, programs often contain inaccuracies at a level that affect the comprehensibility of a program. It is clear that captions often are not checked for accuracy. For example, the following is a non-exhaustive list of captioning mistakes that occurred in a one-hour pre-produced program on the Discovery Channel entitled “Living with Tigers”:

- “scam bellowed” instead of “scrambled”
- “kept tracks” instead of “skeptics”
- “rye no” instead of “rhino”
- “pedal to the medal” instead of “pedal to the metal”
- “posse cat” instead of “pussy cat”
- “what terry” instead of “watery”
- “surface” instead of “suffer”
- “offence” instead of “fence”
- “carin” instead of “carrion”
- “exceed them” instead of “see them”
- “repaired” instead of “prepared”
- “plans” instead of “plains”
- “foul” instead of “fowl”
- “adopt” instead of “adapt.”⁷³

⁷² *Notice of Proposed Rulemaking*, 12 FCC Rcd at ¶ 111.

⁷³ See Exhibit B9, Complaint received from Terrie LaBarbera on October 7, 2003. Another complaint received from Ms. LaBarbera on August 25, 2003 concerning the Discovery

As a starting point, the Commission should revisit and request comment on the non-technical captioning quality standards previously proposed by commenters in the captioning proceedings in order to determine whether the same types of non-technical quality issues still need to be addressed.⁷⁴ In particular, the Commission should consider and examine the feasibility of adopting the following captioning quality standards identified in the *Notice of Proposed Rulemaking*: (a) require that captioned data and information contained in the soundtrack be delivered intact throughout the entire program; (b) require that captioning must transmit information about the audio portion of the program which is functionally equivalent to the information available through the program's soundtrack; (c) require that captions must include all elements of the soundtrack necessary for accessibility, including verbal information, identification of the speaker (if it is not apparent), sound effects, and audience reaction; (d) adopt standards for proper spelling, grammar, timing, accuracy, and placement; and (e) require captions to be provided in the style and standards that are appropriate for the particular type of programming that is being captioned, e.g., real-time captioning should be required for live programming (including local newscasts, as is

Channel's program entitled "Nefertiti Resurrected," included in Exhibit B9, listed the following mistakes:

- "hire gliks" instead of "hieroglyphs"
- "mmyfied" instead of "mummified"
- "blasfeme" instead of "blasphemy"
- "sack ri lj" instead of "sacrilege"
- "proeblg" instead of "probably"
- "kosmo" instead of "cosmos"
- "carnation" or "car mac" instead of "Karnak"
- "lane" instead of "lain"
- "rights" instead of "rites"
- "thrown" for "throne".

⁷⁴ See, e.g., *Notice of Proposed Rulemaking*, 12 FCC Rcd at 1088-1089, ¶106; *Report and Order* at n.705.

required for major news broadcasters pursuant to Rule 79.1) but should not be used in most cases for pre-produced programming.

In addition, the Commission should consider adopting the following captioning quality standards that were suggested by commenters in the previous captioning proceedings: (a) the placement of captions must reflect the source of audio information contained in the soundtrack; (b) captions must be synchronized with the audio content of the program, with some allowance made for programming that is live or recorded shortly before air time; (c) captioning should not interfere with other visually displayed information;⁷⁵ and (d) closed captioned master tapes used for duplication should be labeled as such (e.g., “cc”) as they move through the distribution chain.⁷⁶ The time is ripe for the Commission to adopt non-technical captioning quality standards in order to ensure that video programming is fully accessible to deaf and hard of hearing individuals.

V. Adoption of the Measures Proposed in this Petition is in the Public Interest

As discussed above, Congress recognized that closed captioning is vital to deaf and hard of hearing individuals, both with respect to quality of life and safety issues, when it adopted Section 713 of the Communications Act. The Commission has enacted various rules designed to implement Section 713 and thereby increase the availability of closed captioning in video programming. These rules are a good start towards achieving that goal, but quality standards and enhanced enforcement measures with regard to captioning are needed in order to achieve the goals of full access to video programming.

⁷⁵ For example, the video display often shows a person's name and occupation, a telephone number to call, or other relevant information, that captions obscure or cover completely. This information may not be spoken and thus would not be in the captioning, making it inaccessible to the viewer.

⁷⁶ See *Report and Order* at n. 705 for a summary of the captioning quality standards proposed by commenters.

In creating its closed captioning rules, the Commission established certain benchmarks for captioning in video programming and relied upon the premise that market forces will assist in ensuring captioning quality and availability. Unfortunately, in the time since these rules were initially adopted, experience has proven that market forces alone are not enough to ensure that closed captioning achieves sufficient quality standards. As described above, captioning that does not meet an established quality threshold should not be counted in terms of satisfying the benchmark standards for captioning hours. By establishing quality standards, the Commission will ensure that captioned programming is accurate and useful to the viewer, and thereby will achieve the mandate of Section 713 that video programming be fully accessible to those with hearing difficulties.

The Commission should also adopt enhanced enforcement measures to better implement the existing rules and benchmarks. As described above, because the current rules do not require compliance reporting, video providers and distributors may be unaware that they are out of compliance unless and until they receive a customer complaint. Enhanced enforcement mechanisms under the captioning rules will encourage video distributors and providers to self-audit and monitor their captioning to ensure compliance. By adopting the proposals advocated herein, the Commission will better implement the requirements of Section 713 and thereby increase the overall availability and quality of video programming captioning.

CONCLUSION

The time is overdue for the Commission to adopt rules as outlined herein to strengthen enforcement mechanisms and establish quality standards to better ensure implementation of the captioning rules in accordance with the mandates of Section 713 of the Communications Act. In particular, the Commission should revise its captioning rules to facilitate the complaint process and strengthen enforcement measures (including quarterly captioning compliance reporting,

Commission compliance audits, and the establishment of base forfeiture amounts for violations of the captioning rules); specify procedures for ensuring technical quality; and create standards for non-technical quality. Adoption of the proposals set forth herein will ensure that deaf and hard of hearing individuals who rely on closed captioning in order to have access to video programming will have the access that was intended by passage of Section 713 of the Communications Act. Based on the foregoing, Petitioners respectfully request that the Commission grant this Petition for Rulemaking.

Respectfully submitted,



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EXHIBIT LIST

Exhibit A	Sample Complaint Form
Exhibit B	Complaints
B1	Gretchen Butkus (June 4, 2002)
B2	Joan Cassidy (January 1, 2003)
B3	Lisa Tempesta (May 20, 2002)
B4	Diane Edge (December 20-27, 2002)
B5	Jan Boldt (July 20, 2000)
B6	Gretchen Butkus (October 6, 2003)
B7	Lisa Tempesta (June 10, 2002)
B8	Richard Johnson (May 9, 2003)
B9	Terrie La Barbera (August 25 and October 7, 2003)
Exhibit C	2003 Report to the National Captioning Institute Foundation

TV Captioning Complaint Form

Name: _____

Mailing Address: _____

Email Address: _____

Phone Number: _____ check one - ☐ TTY ☐ Voice

Fax Number: _____

Preferred Method of contact: _____

When did you have this captioning problem? Month _____ Day _____ Year _____

Which TV program did you notice had the problem? _____

Program was on: TV Station _____ Cable Company and channel: _____ Satellite
provider _____

Program lasted from _____ p.m./a.m. to _____ p.m./a.m.

Captioning problem occurred around on _____ p.m./a.m. and ended around on _____ p.m./a.m.

What was the problem with captioning?

Did you attempt to contact someone to discuss the problem? Yes ___ No ___

Were you successful? Yes ___ No ___

If No, why not? _____

If Yes, Date of Contact: _____

Person contacted: _____

Were you given a Reference Number or a Tracking Number? Yes ___ No ___

Reference or Tracking Number (if applicable): _____

Name of TV Station/Cable Provider/Network: _____

What was the response?

Other Comments (if needed) _____

EXHIBIT B

Complaints

Exhibit B1

Gretchen Butkus (June 4, 2002)

Subj: List of TV Channels
Date: Tuesday, June 4, 2002 7:08:58 PM
From: GLButkus
To: NVRCheryl

Cheryl:

Hi! Am growing through an evening of no captions here for ABC. Have misplaced my list of numbers to call for getting help. Called my Time Warner Cable folk and they said it is the Network. The number I got with them was LD and gave me five minutes of alternatives to call and NO satisfaction. Can you send me another copy of the Network phone numbers, please. I guess when I get another copy I will frame it and hang it on the wall! Many thanks for sending on the Deaf Driver cards for the visor through Gay. Will be in touch. Hugs all round! g

Exhibit B2

Joan Cassidy (January 1, 2003)

Subj: **Still no captions on Hallmark Channel**
Date: **Wednesday, January 1, 2003 3:57:00 PM**
From: **JOANCASSDY**
To: **NVRCheryl**

Happy New Year Cheryl!

It's been a month now and still no captions restored to the Hallmark Channel. Can you put something out asking people in other areas if their cable company is broadcasting with captions and maybe get more people to call Hallmark about it?

Here's the history:

Early in December all captioning stopped on Hallmark (I love the old Perry Mason reruns). At first Adelphia Cable said they had no control over what Hallmark captioned - usual response. Then they told me that their (adelphia's) equipment was faulty and needed to be "recalibrated" to match the Hallmark signal. Then they called and said it was Hallmark's fault because they were changing the equipment that sent out the captions????????? They suggested I call H at 888-390-7474 and complain. I did this but only got a machine - they never returned my calls.

Up to this time Hallmark captioned about 50% of their shows so I find it hard to believe they suddenly stopped. I also find it hard to believe they are changing their equipment because they continue to broadcast all the usual shows - only thing missing is the captioning.

I suspect Adelphia is the problem but have nothing to back up my suspicions
grrrrrrrrrrrr

hugs from Joan

Exhibit B3

Lisa Tempesta (May 20, 2002)

Subj: **Re: CBS Survivor was not captioned Sunday Night**
Date: **Monday, May 20, 2002 11:55:34 PM**
From: **Tempesta**
To:

Cheryl, I've complained in the past about "Sex in the City" and the "Sopranos" captioning working sporadically. I've missed whole seasons because of this. I went to Cox Cable and they told me its not their fault, to check with HBO. I went to HBO and they told me go to Cox. So I always get the round about. Neither know what they are talking about so I have so little patience left with these people because they waste my time. Anyway, I'd like to help anyway I can because I continue to have captioning problems with other channels as well. I think its really Cox. I've had my box changed about 4 times to rule that out. I've had the men come to service my cable. I know its got to be coming from their local office but they won't listen to me.

I've even asked for a reimbursement from Cox for no service but since they believe its not their fault that the captions don't work, they suggested I go to HBO. You know the rest.

Anyway, Thanks for your note. I'll write a letter to Cox and send you a copy.

Exhibit B4

Diane Edge (December 20-27, 2002)

Subj: trouble with Pax ?
Date: Friday, December 20, 2002 22:15:57
From:
To:

Are your getting captioning on the Pax station in VA ? I am not and have sent a email to both my cable and Pax. I would just like them to check it out without having to do the FCC thing but... well, I will do that as well if they don't get their act together- let me know if you are getting captioning as it might be Comcast here messing up.

Hey also congrats on beating out the Wilder Commission.. That was an important win and one that we will have to keep an eye on for this side of the beltway as well.

Happy Holidays
Diane

Cable provider: FCC code
Comcast
Waldorf, MD 20602

Subj: **closed caption- Not**
Date: **Monday, December 23, 2002 11:23:39**
From:
To:
bcc:

COMCAST

Monday Dec 22,2002

Dear Ms. True,

I contacted Pax TV in Manassas via their customer service line and left a MD Relay message with them about the absent captioning for Pax TV, which comes to your station and then is rebroadcasted.

I also tried in vain to contact your customer service dept via MD Relay and the female voice on the other end had no clue as to what I was talking about.

She insisted that she would have to send out a service tech to look at my cable or tv set, despite the fact that I told her that my captioning on all other stations was fine. Then she left me on hold for 5 minutes in which she then began to tell me that she talked with a tech and was about to explain to me how to turn on my captioning for my tv. I had asked her simply to relay to the engineering dept that the signal feed was not being captioned.

I do know how to turn on my captions, my other channels are being captioned but the regular scheduled programs from Pax that were captioned and show that they are suppose to be captioned - are in fact not. There is no captioning coming through for Pax TV.

I would hope that some additional training could be taken on your customer service level so that in the future when a call comes in from a deaf consumer, these front line people would be knowledgeable about the subject matter. She had no clue as to what she was trying to say and really does not do your company any justice to have people that are not trained to handle out of the normal questions.

She could not "think outside the box" and her remarks were unsatisfactory for what I was simply trying to convey, which was to tell someone in engineering dept. that the captions for channel 41 Pax TV were not coming through. I finally gave up and just drove over to the office on Post Office RD, walked in and gave my concern on paper to the front service windows.

You are well aware that there is a sizeable Deaf community in Charles County and it is with a better outreach to those consumers, if we could get some needed attention when captions do not appear.

Training of staff would be a huge step, making sure the signals are coming through and a way to allow consumers to alert Comcast when they do not, 24/7
I believe that if we could achieve this level of access and service, it would be most appreciative by all of us. There must be a better way than having to bring this type of information to Comcast.

My concern is to iron out the problems in a pro-active manner, so that in the event of another emergency- we have a system in place before we need it.

Please relay my concerns to those who can follow this up, get ahold of Pax TV and see why there is no captioning signal coming through and then hopefully, you will be motivated to provide the

Southern MD Deaf community a way to bring to Comcast's attention future issues with captioning.

Thank you for reading this e-mail and I hope you will have a safe holiday season

Diane Edge
Advocacy Support League

Subj: Monday evening still no captions
Date: Tuesday, December 24, 2002 8:51:27
From:
To:
bcc:

Comcast - Waldorf,MD

Last night Monday Dec 22,02 I again attempted to watch PAX TV - cable #41 to sit back and enjoy the programs. Sue Thomas FBeye which stars a deaf actress and is a captioned show - a repeat from this past Sunday.. again- no captions are coming through ... This is now well over a week of non captioning that I know of from Comcast -via Pax TV - last Sunday Dec 15 to Tues Dec 24 - programs that appear with captions are not coming through captioned.

I have called your offices, I have appeared in person, I have sent fax and email and no one is doing anything to fix the problem.

The signal is either not getting to Comcast or Comcast is not re-broadcasting it. As a consumer this is very irritating and I am really unsure why this continues to happen.

You must know by now that Pax TV - chan 41 on the Charles County, MD programming has not had any captions on programs that always in past appeared with captions. especially the deaf show Sue Thomas.

Again, you have been asked to call PAX and see what is up or if you are having the problem - then we ask you to adjust that signal feed or whatever is needed.

I would like this fixed and I would also like to see an adjustment on my cable bill because I am not getting the full benefit of what we pay for, More than a weeks worth of shows that I normally enjoy have been without captions and so - I can't enjoy them.

I feel that a refund on my comcast bill is needed - since I did not have full access.

Since Dec 15, 2002= Dec 23,2002 PAX TV chan 41 in Chas CO has not shown programs with captions coming through. My other stations that show captions do appear to be working normally.. so it is only Pax TV that is a problem right now.

I have appeared in person .. called - faxed, and emailed Comcast. No response except to send out a tech and have my set looked at- which is totally off the wall.

Holiday is here and I am sure it will only get worse ... PAX TV is suppose to be feel good tv and I don't feel good about paying for something that I don't get....

Diane Edge

Waldorf, MD 20602

Subj: **PAX shud be fixed...**
Date: **Friday, December 27, 2002 2:08:17 PM**
From:
To:

cc:

From:
Subject:RE: closed captioning
Dear Ms. Edge,

Your closed caption should now be working. Thank you very much for bringing this to my attention. If you have any further problems please feel free to e-mail me directly.

David Linnemeyer
Chief Engineer- WPXW PAX-66 Fairfax Sta. VA
WWPX PAX-60 Martinsburg WV

office:
mob:
page:

SO I ASKED HIM WAS IT COMCAST OR PAX>> WHAT HAPPENED ??
HIS REPLY:

From:
Subject:RE: re[2]: closed captioning

No, I have to admit it was a problem at this station. About the time that the problem occurred we had lost commercial power. This apparently caused a programming error in one of our satellite receivers not allowing it to pass the closed captioning. Thank you again for bringing this to my attention.

David Linnemeyer

12/27/02

Page 1

Chief Engineer- WPXW PAX-66 Fairfax Sta. VA
WWPX PAX-60 Martinsburg WV

office:
mob:
page:

12/27/02

Page 2

Subj: Captions not appearing on CC depicted shows..master control operator
Date: Thursday, December 26, 2002 10:21:57
From:
To:
cc:
bcc:

PAX TV - master control operator

I have called your tv station, have contacted my local comcast station in waldorf.md and I tried email as well.
since Dec 15th - that I am aware of, pax tv has not shown the accompanying captions to the shows that are indeed captioned and depicted by the CC mark.
The captions are not coming through. This is not feel good tv. This is almost impossible to bring to anyone's attention and I am looking 11 days without benefit of captions- which means I have not been able to enjoy Pax tv.
Since I am dependent on captions this 11 days means that every captioned show that Pax tv has broadcasted, the closed captions did not follow.
If this was a audio signal that was transmitting sound and was missing for more than 24 minutes- I suspect there would be an uproar... But deaf have a hard time getting your attention through that automated voice system and sending emails seems to be unread... So why bother ?
Ironically the deaf show Sue Thomas FBEye is not even captioned and I am not a skilled lipreader...
Something is wrong with the signals or comcast in waldorf is screwing up but they claim they are not.
Can someone = please do something to turn on the captions and correct this problem ?

Diane Edge
Waldorf,MD

----- Headers -----

Return-Path:
Received: from
(v90.10) with ESMTP id

: Thu, 26 Dec 2002 10:21:57 -0500

Exhibit B5

Jan Boldt (July 20, 2000)

Subj: **Re: NVRC Thurs News - WITH VERY IMPORTANT ACTION
ALERT**
Date: Thursday, July 20, 2000 8:57:50 AM
From:
To:

Cheryl,

You might want to ask the FCC why they don't monitor some of our programs to make sure captioning ends at the end of programs, and to see if the captions run with the voices, not before or after....for the past month, for almost all the programs I watch at night, including Channel 4's 5:00 and 6:00 news, captions have ended anywhere from 5 to 10 minutes before the end of the program, depriving viewers of a show's ending. Channel 3, formerly 50, last Sunday on "Relic Hunter," had their captions running a sentence or two behind the actors' voices. "Little" things like this, not to mention programs advertised as being captioned but turn out not to be (movies, for example), make the whole idea of having captions worthless if they don't provide EQUAL ACCESS!!!

Jan Boldt, Falls Church

Exhibit B6

Gretchen Butkus (October 6, 2003)

Cheryl Heppner

From:
Sent: Monday, October 06, 2003 7:09 PM
To:
Subject: Re: Captioning problems

In a message dated 10/6/03 2:19:28 PM Eastern Daylight Time, writes:

| in June 2002 when you had problems with captions on ABC

No, that's fine, go ahead and use it and you may use my name as well if that lends more credence to the happenstance. Actually, I am pretty irate with the manner in which captions are performed on our local news programs here in FL.....Orlando, Daytona Beach as NBC and ABC affiliates. The captioners have obviously received the MAJOR news stories from the studio anchors and follow those fairly well. But even with those major stories, if there is any deviation whatsoever, captioners just roll along and ignore the additional news. When it comes to the local weather, we see "toss to weather" and that's the last you read until they come back to the "MAJOR" news again, often starting that while the weathercaster is still on. (How remote is the weathercaster? They appear at the anchor desk soon after their standup delivery!) There is a regular feature with a gardening expert to talk about plants and "answer questions sent in by listeners" and that also is NEVER captioned. I wonder if he is aware of how many listeners are not getting anything from his "advice".

If you watch a nationally syndicated show like "Today" on NBC, the program is captioned in its entirety...EXCEPT when Al Roker finishes up the National weather picture and funnels to the local station. Then, deaf people have no clue, other than the posted pictures with the temperatures and rain, sun, snow icons at the end. "Better than nothing?" you might say? Well, then why bother with anything else for hearing people!

I am grateful to be able to tune in the Weather Channel. But not everyone has that access.

Good luck to you and Claude with your presentation, Cheryl! NVRC (South) hugs, G

I would like to have names and numbers to contact locally when there are these problems. Is the Cable Company supposed to provide those? Often programs are listed in Florida Today newspaper as being captioned and invariably they are not.

10/7/2003

Exhibit B7

Lisa Tempesta (June 10, 2002)

Subj: Comcast did not experience Captioning problems as did Cox!
Date: Monday, June 10, 2002 10:27:11 AM
From:
To:
bcc:

Andrew, please read the email from my sister who was able to watch the Survivor Finale show with full captioning support. I have been working really hard to make Cox realize that the fault of caption anomalies probably lies at Cox. I'd appreciate hearing from you again in regards to why Columbia, Maryland is able to get captions and Vienna and Alexandria are not. Thank you.

Lisa Tempesta

Subj: Re: Fwd: Technical Support
Date: Wed, 5 Jun 2002 6:47:49 PM Eastern Daylight Time
From:
To:

Lisa,

Your Cox cable is wrong. Randy and I were able to watch the show with captioned for two full hours!!! I would suggest you tell him that your sister in Baltimore watched that show and her cable is Comcast. Ask them how come the signal feed from the network to comcast worked, not Cox!!! I have heard that sometimes the cable company or local television didn't bother to fix their signal feed. It's their Cox's technical problem that caused captioned missing. Have them take another look into it. I do not think they bother to take a closer look!!!

In a message dated Mon, 3 Jun 2002 5:26:08 PM Eastern Daylight Time, Tempesta writes:

>In a message dated 5/22/2002 12:08:01 PM Eastern Standard Time,
> writes:
>

>
>> Subj:Re: Technical Support
>> Date:5/22/2002 12:08:01 PM Eastern Standard Time
>> From:
>> To:
>> Sent from the Internet
>
>
>
>
>> Dear Ms. Tempesta:
>
>> Thank you for contacting our Cox Northern Virginia Online Customer
Care
>> Team. We had contacted the network about this. They advised us the
>> ~~Closed Captioning~~ for the show was not ~~working~~ properly for any user.
>> This was a problem with the signal feed from the network to Cox
Northern
>> Virginia.
>
>> If you need additional information on other Cox products or services,
>> please visit our web site at <http://www.cox.com/fairfax>.
>> We hope that we have been able to provide you with the information you
>> requested. If we have not, or if we can be of any additional service to
>> you, please do not hesitate to contact us again.
>
>> My name is Andrew.
>> Thank you for choosing Cox Communications!
>
>> Sincerely,
>> The Cox Northern Virginia Online Customer Care Team
>
>
>
>> Original Message Follows:
>> -----
>
>> Form Message
>> subject: Technical Support
>> detail: Cox Cable
>> FirstName: Lisa

>> LastName: Tempesta
>> Email Address:
>> VerifyEmail:
>> SecondaryEmail:
>> Phone:
>> Account:
>> HomeAddress:
>> City: Vienna
>> State: VA
>> Zip: 22181
>> UserID:
>> Comments: The closed captions for the Survivor: Marquesas Finale
show
>> did not work at all during the 2 hours the show was aired on Sunday
>> evening, May 17 from 8 to 10 pm. I watched this show every week for
13
>> weeks only to find out that I could not watch how it all came to an end.
>> I tried to troubleshoot the problem by turning my TV on and off,
>> changing channels to see if other shows were captioned (they were),
>> turned my cable box on and off and nothing succeeded in getting the
>> captions to work. I found out from a friend that Survivor also was not
>> captioned within his area in Springfield. He also has Cox Cable service.
>> His name is Jason Teramae and he lives at 6832 Clowser Court,
>> Springfield, VA 22150. I asked my sister who is also an avid Survivor
>> fan if she got closed captioning in her area. She lives in Columbia,
>> Maryland. She said all of the show (2 hours) except for the last 10
>> minutes were captioned. I've reported numerous problems with captions
>> not working, specifically with the shows Sex in the City and The
>> Sopranos. I've had to give up watching these series and I've missed
>> entire seasons. I've had to rely on renting the tapes at Blockbuster to
>> see these shows. I've had Cox technicians replace the cable box - in
>> fact this was done several times. I've also had the technicians examine
>> the external connection (poke around in the outside box that joins the
>> cable from outside to the cable that runs inside my house). I've even
>> visited your office in Chantilly to voice the problems. I was told by
>> the Cox representative that the problem was with HBO. The Cox
>> representative gave me a phone number at HBO to call. I then talked
with
>> HBO and they told me that this was a problem that should be fixed by
Cox

>> Cable. So each party points the finger at each other which is not
>> productive and I, the customer is left in the rain with a broken
>> umbrella you've both sold to me. My point is this: There are too many
>> times when the captions have not worked on a particular show or a
series
>> and Cox Cable has ignored my complaints. I implore that you please stop
>> disregarding my complaints without carefully examining the
cause/source
>> of the problem. I look forward to hearing from you. Thank you for your
>> attention to this matter. Lisa Tempesta
>> submit: Submit Questions
>
>
>
>
>Subject: Re: Technical Support
>Date: Wed, 22 May 2002 12:07:33 -0400
>From: Cox eCare Northern Virginia
>To: .
>
>Dear Ms. Tempesta:
>
>Thank you for contacting our Cox Northern Virginia Online Customer Care
>Team. We had contacted the network about this. They advised us the
>Closed Captioning for the show was not working properly for any user.
>This was a problem with the signal feed from the network to Cox
Northern
>Virginia.
>
>If you need additional information on other Cox products or services,
>please visit our web site at <http://www.cox.com/fairfax>.
>We hope that we have been able to provide you with the information you
>requested. If we have not, or if we can be of any additional service to
>you, please do not hesitate to contact us again.
>
>My name is Andrew.
>Thank you for choosing Cox Communications!
>
>Sincerely,
>The Cox Northern Virginia Online Customer Care Team

>
>
>
>Original Message Follows:
>-----
>
>Form Message
>subject: Technical Support
>detail: Cox Cable
>FirstName: Lisa
>LastName: Tempesta
>Email Address:
>VerifyEmail:
>SecondaryEmail:
>Phone:
>Account:
>HomeAddress:
>City: Vienna
>State: VA
>Zip: 22181
>UserID:
>Comments: The closed captions for the Survivor: Marquesas Finale show
>did not work at all during the 2 hours the show was aired on Sunday
>evening, May 17 from 8 to 10 pm. I watched this show every week for 13
>weeks only to find out that I could not watch how it all came to an end.
>I tried to troubleshoot the problem by turning my TV on and off,
>changing channels to see if other shows were captioned (they were),
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>captions to work. I found out from a friend that Survivor also was not
>captioned within his area in Springfield. He also has Cox Cable service.
>His name is Jason Teramae and he lives at 6832 Clowser Court,
>Springfield, VA 22150. I asked my sister who is also an avid Survivor
>fan if she got closed captioning in her area. She lives in Columbia,
>Maryland. She said all of the show (2 hours) except for the last 10
>minutes were captioned. I've reported numerous problems with captions
>not working, specifically with the shows Sex in the City and The
>Sopranos. I've had to give up watching these series and I've missed
>entire seasons. I've had to rely on renting the tapes at Blockbuster to
>see these shows. I've had Cox technicians replace the cable box - in
>fact this was done several times. I've also had the technicians examine

>the external connection (poke around in the outside box that joins the
>cable from outside to the cable that runs inside my house). I've even
>visited your office in Chantilly to voice the problems. I was told by
>the Cox representative that the problem was with HBO. The Cox
>representative gave me a phone number at HBO to call. I then talked with
>HBO and they told me that this was a problem that should be fixed by Cox
>Cable. So each party points the finger at each other which is not
>productive and I, the customer is left in the rain with a broken
>umbrella you've both sold to me. My point is this: There are too many
>times when the captions have not worked on a particular show or a series
>and Cox Cable has ignored my complaints. I implore that you please stop
>disregarding my complaints without carefully examining the
cause/source
>of the problem. I look forward to hearing from you. Thank you for your
>attention to this matter. Lisa Tempesta
>submit: Submit Questions
>
>

Exhibit B8

Richard Johnson (May 9, 2003)

Cheryl Heppner

From: Johnson, Richard
Sent: Friday, May 09, 2003 9:30 AM
To: Cheryl Heppner
Subject: RE: Channel 5 Captioning Errors

Yup. ComCast I think. Actually, last night it was much better than it has been for about 2 weeks. I was thinking, "Gee, Cheryl sure works quickly!" Interestingly enough, I also have ComCast at the beach house --- out of OC I think and it has not been at all bad.

-----Original Message-----

From: Cheryl Heppner
Sent: Friday, May 09, 2003 9:10 AM
To: Johnson, Richard
Subject: RE: Channel 5 Captioning Errors

Just out of curiosity, are you getting your captions through a cable provider? I have Cox and had taped a program on Tuesday night on Fox that was followed by the news. I watched the first 10 minutes and saw captioning mistakes but not to the extent you seem to be experiencing.

Cheryl

-----Original Message-----

From: Johnson, Richard
Sent: Thursday, May 08, 2003 4:41 PM
To: Cheryl Heppner
Subject: RE: Channel 5 Captioning Errors

Yup. It almost looks like an effort to increase the voice-to-print aspect, but with the volume turned up too high!

Thank you for your continuing efforts on behalf of deaf folk.

-----Original Message-----

From: Cheryl Heppner
Sent: Thursday, May 08, 2003 4:38 PM
To: Johnson, Richard
Subject: RE: Channel 5 Captioning Errors

Thanks, Dick. I'll wait to see if any of our e-mail news readers respond after tonight and then send something out tomorrow. This is so frustrating! These folks are asleep at the switch. We all know that if the audio was that garbled, it would be fixed PDQ.

Warm regards,
Cheryl

-----Original Message-----

From: Johnson, Richard
Sent: Thursday, May 08, 2003 4:20 PM
To: Cheryl Heppner
Subject: Channel 5 Captioning Errors
Importance: High

5/12/2003

Ms. Heppner:

I understand that you have means to convey to various TV stations some feedback on the quality of their captioning efforts. For years I have watched Channel 5 news, from 10PM to 11PM. Of late the quality of their captions has dropped far below any reasonably acceptable level. I do not know what they are doing, or trying to do, but the results is totally unacceptable.

Thank you for any attention you can bring on this situation.

April 29 -30, 2003 the 10 o'clock news was totally garbled.

May 5, 2003 the 10 o'clock news captioning was garbled throughout

May 6, 2003 the 10 o'clock news captioning was one solid hour of gibberish

May 7, 2003 the 10 o'clock news had a caption error rate so high that the text was totally incomprehensible

5/12/2003

Exhibit B9

Terrie La Barbera (August 25 and October 7, 2003)

Re: What's up with Channel 20???
Monday, August 25, 2003 14:38:29

That would be great...I recently emailed the Discovery channel about the captioning of **Nefertiti Resurrected** which was just sooo full of misspellings it was amazing...I don't understand why a program that they've obviously spent lots of money producing (and it was very interesting) has such shitty captioning...it's a consistent problem with the Discovery channel programming...I've never seen any notice of who does the captioning...I think it might be done in-house and no one proofs them...

Here are some of the misspellings I noted in my email:

"thrown" for "throne"
"lane" for "lain"
"proebly" for "probably"
"kosmo" for "cosmos"
"carnation" for "karnak"
"car mac" for "karnak"
"sack ri ij" for "sacrilege"
"blasfeme" for "blasphemy"
"rights" for "rites"
"mmyfied" for "mummified"
"hire gliks" for "hieroglyphs"

"baess chain" for "bastion"
"praciting ma tist" for "pragmatist"
"it's true" for "if true"

Terrie

Hearlers

Cheryl Heppner

From: Tuesday, October 07, 2003 12:54 PM
Sent:
To:
Subject: Re: Captioning complaint

>>I have kept some good examples in my files and one of them is your list of misspellings from Nefertiti Resurrected. Is it okay if I share this? If you'd like, I can leave out your name.<<

Feel free to share and pass on my name (add my email addy) if you think they'd find that useful...

Here's an additional list from the Discovery channel's "~~Living with Tigers~~" (this program was captioned by Vitac.com captioning):

surface > suffer
offence > fence
what terry > watery
~~weigh station > way station~~
carin > carrion
rye no > rhino
posse cat > pussy cat
foul > fowl
adopt > adapt
exceed them > see, them
plans > plains
scam bellowed > scrambled
kept tracks > skeptic\$
repaired > prepared
pedal to the medal > petal to the metal

One of the worst closed captioning is on the National Geographic specials shown on MSNBC (I think that the channel)...it's so bad that the program is unwatchable...it's as though the captioning is done live because it's sooo slow...

Terrie

EXHIBIT C

2003 Report to the National Captioning Institute Foundation

Recommendations

1. **Address technical issues quickly, before video providers move to digital broadcasting and the 2006 mandate for 100 percent captioning is in place.** Our experiences in trying to content analyze the closed captions and the reported experiences of survey respondents illustrate that the medium itself (television transmission, videocassette recording, digital recording) often introduces error that makes it challenging to watch the captions.
2. **Provide better labeling of captioned shows and provide consistent information about caption sponsor and caption provider.** Coders and respondents had no reliable source of information about whether an upcoming show was captioned and there was very little clear or standardized presentation of who paid for the captions or who provided them. Including such information in the program's captions will likely promote the image of the companies but also increase the salience of closed captioning.
3. **Make it clear who audiences can contact and how.** The Federal Communications Commission suggests that audiences with complaints first contact the network or cable company. Yet the industry interviews reveal that they receive very little feedback from audiences. Indeed, it was more often the captioning company, which sometimes provides a website or is a local entity, who gets the complaints. Offering the station's website, with a "link" for closed captioning, might begin a dialogue between audiences who use closed captioning and programmers that provide them.
4. **Increase investment in the provision of high-quality captioning for local news programming.** Our respondents complained that local news captions go too fast, have too many mistakes, and are often garbled or absent. Our content analysis suggests that they are correct in their complaints. It is a difficult genre to caption – due to the pace of the stories and the idiosyncrasies of the people and places – and unique and dedicated captioners may be required to improve the quality. The survey data indicate that an added investment is warranted because local news captions are the most widely used captions by all audiences and respondents say it is more important to caption this genre of television than any other.
5. **Wherever possible, avoid real-time captioning.** Though live genres often warrant live captions, we saw many instances in the content analysis of

prerecorded programs (such as *Ricki Lake* or *Celebrity Justice*) where the captions are done in real time. This style of captioning is significantly more likely to negatively affect the meaning of the captions and is more likely to introduce problems. Though industry interviews suggest that this is a cheaper way to meet the mandate, it is likely not the intent of the policymakers to have captioning done “on the fly.”

6. **Build quality control into the process of closed captioning.** The escalating need for captioning has led to a proliferation in the number of captioning companies. Yet few television stations say they look at the closed captions in a consistent or critical way. (Indeed, one station manager didn’t believe he had a television at the station or at his home that would allow him to access the closed captions.) Quality control must be an integral part of the implementation of the closed captioning mandate. Ideally, it occurs at each stage of the process: from the application of the captions to the reception on screens.
7. **Recognize that the audience for closed captioning goes beyond those who are deaf and hard of hearing.** While hearing impaired audiences are the heaviest users of closed captions, ESL respondents are consistent users of closed captions, too, saying they use captions to help learn English and develop their reading skills. Respondents from the general population also indicate that they use closed captions when they can’t hear the sound, when they don’t want to hear the sound or when they don’t want to disturb someone else.
8. **Though the closed captioning mandate does not extend to prerecorded video programming, it is clear that audiences are making use of the captioning available on videotape and DVD recordings.** Use of captions in these venues is high; and a great deal of interest has been expressed for the provision of closed captioning in Internet audio.
9. **Audiences are, for the most part, pleased with closed captions.** Closed captions are also widely available. It is now important to conduct research that assesses the best practices for closed captioning style and speed to obtain a sense of the type of captioning that is most effective and pleasing. This might include exploring whether different types of captioning conventions should be used for different program genres.
10. **Making communication technologies truly accessible to underserved groups means understanding the audiences who have special needs and addressing them with unique services.** Greater sophistication in digital technology and television set design may provide an opportunity for closed captioning to be more customized to individuals’ needs. Many respondents expressed personal preferences for the captions

-- larger type, all caps, or slower pace, for example. Given the increasingly widespread use of captions across a wide variety of audiences, it is critical to consider creating a technology that can allow the expression of personal preferences with individual programming.

Caveat: Limitations of the Data

This research was designed to explore the availability, quality, and reception of closed captioning in the United States today. While we attempted to take a comprehensive look at closed captioning from a variety of perspectives, it is important to keep in mind that there are limits to the generalizability of the conclusions. In particular, the TiVo sample of general programming came from a large broadcast market during a particular period of time. Because of the size of the market and the stations' network affiliations, it is possible that this represents the "best" of closed captioning because of the resources available to programmers. In addition, the respondents used for the audience survey and the industry interviews were carefully recruited to represent a variety of perspectives rather than randomly drawn from a large population. As a result, the findings should be considered exploratory.

Decisions about the sampling of the sample of general programs (recorded via TiVo) and news programs (recorded on videotape from local markets and national markets and transferred to DVD) were made by Annenberg researchers through a random procedure.

¹ The rules exempt video program providers who have revenues of less than \$3 million per year, programs which are in a language other than English or Spanish, programs for which the audio content is displayed visually, programs shown on new networks for the first four years of the networks' operation, locally produced non-news programs, programs shown between 2am and 6am, and commercials which are no more than 5 minutes long.

² Differences are considered significant if the p value is less than or equal to .05.

³ Because the survey was not randomly distributed, the findings must be treated as exploratory and illustrative of the groups from which they were drawn. The data allow us to make comparisons between groups and suggest avenues for further exploration, but cannot be interpreted as representative of a national population of closed captioning users.

⁴ One industry interview was conducted in August 2002 because of scheduling difficulties.